

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

FIRST REGULAR SESSION
FIFTY-EIGHTH LEGISLATURE

TWENTY-SECOND LEGISLATIVE DAY
MONDAY, JANUARY 31, 2005

Senate Chamber

President Risch called the Senate to order at 11:30 a.m.

Roll call showed all members present except Senators Darrington and Marley, absent and formally excused by the Chair.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Austyn Lewis, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of January 28, 2005, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

SR 102 BY JUDICIARY AND RULES COMMITTEE A SENATE RESOLUTION

PROVIDING FOR THE AMENDMENT OF RULE 7 OF THE RULES OF THE SENATE.

Be It Resolved by the Senate of the State of Idaho:

WHEREAS, the Senate deems it necessary and desirable to amend Rule 7 of the Rules of the Senate.

NOW, THEREFORE, BE IT RESOLVED by the members of the Senate, assembled in the First Regular Session of the Fifty-eighth Idaho Legislature, that Rule 7 of the Rules of the Senate be amended to read as follows:

RULE 7

Employees of Senate.--(A) The officers and employees of the Senate shall consist of one secretary, one assistant secretary, one journal clerk, one docket clerk, one chaplain, one sergeant at arms, one doorkeeper, two pages, one janitor, one payroll clerk, and such other assistants, clerks, secretaries, and other employees as the Senate may determine to be required for the expeditious conduct of its business.

Duties of Employees.--(B) It shall be the duty of the Secretary of the Senate to attend each day, call the roll, read the journals and bills, and to copy or take charge of and superintend all copying necessary to be done for the Senate.

It shall be the duty of the Assistant Secretary of the Senate to take charge of all bills, petitions, and other papers presented to the Senate, to file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the Secretary of the Senate.

It shall furthermore be the duty of the Secretary of the Senate to keep a correct record of the proceedings of each day, for the purpose of having such proceedings entered in the Journal by the Journal Clerk.

It shall be the duty of the Journal Clerk of the Senate to record each day's proceedings in the Journal, from which they shall be read by the Secretary each day of meeting, in order that they may be authenticated by the signature of the President.

It shall be the duty of the Sergeant at Arms of the Senate to give a general supervision, under the direction of the presiding officers, of the Senate Chamber, with the rooms attached; to attend during the sittings of the Senate, execute its commands, together with all such proceedings issued by authority thereof, as shall be directed by the presiding officers.

It shall be the duty of the Doorkeeper to prohibit all persons from entering the bar of the Senate except those who by rule or invitation are permitted, and to arrest for contempt all persons outside of the bar or in the gallery found engaged in loud conversation, or otherwise making a noise, to the disturbance of the Senate.

It shall be the duty of the Janitor to keep the furniture of the Senate in good order, and perform such other duties as he may be directed to do by the President Pro Tempore of the Senate.

It shall be the duty of the Payroll Clerk to prepare the payroll and all payroll documents, prepare all vouchers for all expenses of the Senate and keep all records pertaining thereto.

It shall be the duty of the Chaplain to open the proceedings of the Senate with prayer.

Selection and Pay of Employees.--(C) All employees of the Senate shall be selected by an attache committee, which committee shall be appointed by the Senate leadership, ~~of the Senate~~, and the employees so selected shall be subject to the approval of the Senate. There shall be paid to the employees of the Senate, for all services rendered by them, such compensation as may be ~~fixed by Senate resolution~~ determined by Senate leadership. The President Pro Tempore is authorized to retain such personnel as deemed necessary during the interim.

Supervision of Employees.--(D) Subject to the overall supervision of the President Pro Tempore, the Secretary of the Senate shall have general responsibility for all Senate employees,

although doorkeepers, watchmen, janitors, pages, and others charged with housekeeping functions, shall be immediately responsible to the Sergeant at Arms.

Removal of Employees.--(E) Any of the employees of the Senate may be removed by a two-thirds vote of the members of the Senate for failure to perform the duties imposed upon them, or for incompetency, or for conduct which shall by the Senate be deemed improper.

Delivery of Bills and Papers to Secretary of State.-- (F) It shall be the duty of the Secretary of the Senate, at the close of each session of the legislature, to mark, label, and arrange all bills and papers belonging to the archives of the Senate, and to deliver the same, together with all the books of the Senate, to the Secretary of State, who shall certify to the reception of the same.

Purchases, Etc.--(G) No purchase shall be made or expense incurred by the Sergeant at Arms or any officer or employee of the Senate in its behalf except upon the written order of the President Pro Tempore.

**SR 103
BY JUDICIARY AND RULES COMMITTEE
A SENATE RESOLUTION**

PROVIDING FOR THE AMENDMENT OF RULE 47 OF THE RULES OF THE SENATE.

Be It Resolved by the Senate of the State of Idaho:

WHEREAS, the Senate deems it necessary and desirable to amend Rule 47 of the Rules of the Senate.

NOW, THEREFORE, BE IT RESOLVED by the members of the Senate, assembled in the First Regular Session of the Fifty-eighth Idaho Legislature, that Rule 47 of the Rules of the Senate be amended to read as follows:

RULE 47

General and Special Rules.--(A) If any rule of procedure contained in these rules and having application to a particular situation or action appears to be in conflict with another rule more general in nature, the special rule shall apply in the situation specified.

~~**Constitution Inconsistent.--(B)** If any laws or constitutional provisions of the State of Idaho are inconsistent with these rules, the conflicting rule shall defer to the law or constitutional provision.~~

**SR 104
BY JUDICIARY AND RULES COMMITTEE**

A SENATE RESOLUTION

PROVIDING FOR THE AMENDMENT OF RULE 20 OF THE RULES OF THE SENATE.

Be It Resolved by the Senate of the State of Idaho:

WHEREAS, the Senate deems it necessary and desirable to amend Rule 20 of the Rules of the Senate.

NOW, THEREFORE, BE IT RESOLVED by the members of the Senate, assembled in the First Regular Session of the

Fifty-eighth Idaho Legislature, that Rule 20 of the Rules of the Senate shall be amended to read as follows:

RULE 20

Committees--Quorum.--(A) Committees shall not proceed to the transaction of business except upon a quorum being present when the committee convenes, nor thereafter if any member objects to a lack of a quorum. A quorum shall consist of a majority of the committee membership.

Committee Meetings.--(B) No committee shall meet during the session of the Senate, nor at any time occupy the Senate Chamber, without leave of the Senate.

Committees--Rules and Procedure.--(C) Unless otherwise specified, general rules of procedure governing the Senate shall govern procedure in all committees and subcommittees, except there may be no call of any committee or of the Senate while in the Committee of the Whole. A motion to adjourn shall not be in order in the Committee of the Whole.

Committee Hearings.--(D) All proceedings of the Senate and the Committee of the Whole shall be open. Hearings held by any standing, select, or special committee shall be open to the public at all times, and any person may attend any hearing of such committee, but may participate in the committee only with the approval of the committee itself. The committee chairman, or the acting chairman, shall announce the subject of the matter under inquiry and proceed with hearing testimony or examining witnesses. Each person testifying before the committee shall state his name, address, business, or occupation, and special interest in the matter being heard.

Committee Meetings Attendance.--(E) All persons may attend any meeting of any standing, select, or special committee, but may participate in deliberations or discussions only with the approval of the committee. Nothing contained in this rule shall be construed to prevent, upon a two-thirds vote recorded in the minutes of the meeting of the committee, the committee from holding an executive session during any meeting, ~~after the chairman has identified the authorization under the provisions of Section 67-2345, Idaho Code, for holding the executive session. An executive session may be held as provided in Section 67-2345, Idaho Code at which time persons who are not members of the legislature may be excluded, provided however, that during such executive session, no votes or official action may be taken.~~

Objection to Testimony.--(F) If any member of the committee shall object to the testimony, or any part thereof, of any witness, the chair of the committee may overrule the objection, require the witness to refrain from the objectionable testimony or may disallow further testimony and otherwise maintain order. The chair of the committee shall decide all questions of order subject to appeal.

Buck Slips.--(G) Buck slips may be used for committee action on the introduction of or recommendations on bills, but only in instances where committee meetings are impractical. The objection to the use of a buck slip by one committee member shall preclude its use in that instance. All committee members, who are not absent and excused from attendance in the Senate on that day, shall be required to sign their names indicating their aye or nay vote on the matter being considered.

SR 102, SR 103, and SR 104 were introduced, read at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

January 28, 2005

The JUDICIARY AND RULES Committee reports that **S 1024** and **S 1025** have been correctly enrolled.

DARRINGTON, Chairman

The President signed Enrolled **S 1024** and **S 1025** and ordered them transmitted to the House for the signature of the Speaker.

January 28, 2005

The EDUCATION Committee reports out **S 1019** with the recommendation that it do pass.

GOEDDE, Chairman

S 1019 was filed for second reading.

January 28, 2005

The RESOURCES AND ENVIRONMENT Committee reports out **S 1032** and **S 1033** with the recommendation that they do pass.

SCHROEDER, Chairman

S 1032 and **S 1033** were filed for second reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Tenth Order of Business.

Motions and Resolutions

The President announced that **SCR 102**, having been held, was before the Senate for final consideration.

Moved by President Pro Tempore Geddes, seconded by Senator Stennett, that **SCR 102** be adopted. The question being, "Shall the resolution be adopted?"

Roll call resulted as follows:

AYES--Broadsword, Burkett, Burtenshaw, Coiner, Compton, Darrington, Davis, Geddes, Jorgenson, Kelly, Keough, Langhorst, Little, Malepeai, Stennett, Werk. Total - 16.

NAYS--Andreason, Brandt, Bunderson, Cameron, Corder, Gannon, Goedde, Hill, Lodge, McGee, McKenzie, Noble, Pearce, Richardson, Schroeder, Stegner, Sweet, Williams (Williams). Total - 18.

Absent and excused--Marley. Total - 1.

Paired and voting included in roll call:

AYE - Darrington NAY - Stegner

Total - 35.

Whereupon the President declared that the Senate had failed to adopt **SCR 102** and ordered the resolution filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1067

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-1401, IDAHO CODE, TO REVISE THE PUNISHMENT FOR RECKLESS DRIVING AND INATTENTIVE DRIVING.

S 1068

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE NATURAL DEATH AND MEDICAL CONSENT ACT; REPEALING CHAPTERS 43 AND 45, TITLE 39, IDAHO CODE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 45, TITLE 39, IDAHO CODE, TO SET FORTH PURPOSES, TO PROVIDE FOR CHAPTER APPLICATION, TO PROVIDE A STATEMENT OF LEGISLATIVE POLICY, TO DEFINE TERMS, TO PROVIDE FOR A LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE, TO PROVIDE FOR REVOCATION, TO PROVIDE FOR EXECUTION, TO PROVIDE IMMUNITY, TO SET FORTH GENERAL PROVISIONS, TO STATE WHO MAY CONSENT TO THEIR OWN CARE, TO STATE WHO MAY GIVE CONSENT TO CARE FOR OTHERS, TO PROVIDE FOR BLOOD TESTING, TO SET FORTH PROVISIONS APPLICABLE TO THE FORM OF CONSENT AND TO SET FORTH RESPONSIBILITY FOR CONSENT AND DOCUMENTATION; AMENDING SECTION 5-332, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 31-3910, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-3902, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-4509, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 54-1142, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 56-1015, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 66-405, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

S 1069

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO ESTATES; AMENDING SECTION 15-3-1205, IDAHO CODE, TO CLARIFY PROCEDURES APPLICABLE TO THE SUMMARY ADMINISTRATION OF ESTATES IN WHICH A SURVIVING SPOUSE IS THE SOLE BENEFICIARY.

S 1070

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO PURPOSE TRUSTS; AMENDING CHAPTER 7, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 6, CHAPTER 7, TITLE 15, IDAHO CODE, TO SET FORTH PROVISIONS APPLICABLE TO THE CREATION AND ENFORCEMENT OF PURPOSE TRUSTS.

S 1071**BY JUDICIARY AND RULES COMMITTEE
AN ACT**

RELATING TO TRUSTS AND ESTATES; AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 8, TITLE 15, IDAHO CODE, TO SET FORTH THE TRUST AND ESTATE DISPUTE RESOLUTION ACT, TO PROVIDE A SHORT TITLE, TO STATE THE PURPOSE OF THE ACT, TO PROVIDE FOR COURT POWERS, TO DEFINE TERMS, TO SET FORTH PERSONS ENTITLED TO CERTAIN JUDICIAL PROCEEDINGS, TO PROVIDE FOR JUDICIAL PROCEEDINGS, TO PROVIDE FOR APPLICATION OF THE IDAHO RULES OF CIVIL PROCEDURE, TO PROVIDE FOR NOTICE, TO PROVIDE FOR APPLICATION OF THE DOCTRINE OF VIRTUAL REPRESENTATION, TO PROVIDE FOR SPECIAL NOTICE, TO PROVIDE FOR WAIVER OF NOTICE, TO PROVIDE FOR COSTS AND ATTORNEY'S FEES, TO PROVIDE FOR THE APPOINTMENT OF A GUARDIAN AD LITEM, TO PROVIDE FOR TRIAL BY JURY, TO PROVIDE FOR THE EXECUTION ON JUDGMENTS, TO PROVIDE FOR APPELLATE REVIEW, TO SET FORTH THE PURPOSE OF NONJUDICIAL RESOLUTION, TO PROVIDE FOR BINDING AGREEMENTS, TO PROVIDE FOR THE ENTRY OF AN AGREEMENT WITH THE COURT AND THE EFFECT OF SUCH AGREEMENT, TO PROVIDE FOR JUDICIAL APPROVAL OF AN AGREEMENT, TO PROVIDE FOR SPECIAL REPRESENTATIVES AND TO SET FORTH THE FORM OF THE PETITION AND ORDER FOR THE APPOINTMENT OF A SPECIAL REPRESENTATIVE.

S 1072**BY JUDICIARY AND RULES COMMITTEE
AN ACT**

RELATING TO HEIRS; AMENDING SECTION 15-2-108, IDAHO CODE, TO PROVIDE FOR INHERITANCE BY RELATIVES CONCEIVED BY NATURAL OR ARTIFICIAL MEANS WHO ARE BORN WITHIN TEN MONTHS AFTER THE DECEDENT'S DEATH.

S 1073**BY JUDICIARY AND RULES COMMITTEE
AN ACT**

RELATING TO MARRIAGE SETTLEMENTS; AMENDING SECTION 32-918, IDAHO CODE, TO PROVIDE FOR THE RECORDING OF SUMMARIES OF CONTRACTS AND TO PROVIDE FOR THE EFFECT OF SUCH RECORDING.

S 1074**BY STATE AFFAIRS COMMITTEE
AN ACT**

RELATING TO SIMULCASTING OF DOG RACES; AMENDING SECTION 54-2514A, IDAHO CODE, TO AUTHORIZE SIMULCASTS AND PARI-MUTUEL WAGERING AT AN ALTERNATE FACILITY IN THE SAME COUNTY AS A FORMER DOG RACING TRACK IF APPROVED BY THE IDAHO RACING COMMISSION.

S 1075**BY STATE AFFAIRS COMMITTEE
AN ACT**

RELATING TO LEGISLATIVE SUBCOMMITTEES FOR REVIEW OF ADMINISTRATIVE RULES REVIEW; AMENDING SECTION 67-454, IDAHO CODE, TO INCREASE THE NUMBER OF DAYS WHEN RULES REVIEW SUBCOMMITTEES MAY HOLD A MEETING ON PROPOSED RULES AFTER RECEIPT OF THE ANALYSIS FROM THE LEGISLATIVE SERVICES OFFICE.

S 1076**BY STATE AFFAIRS COMMITTEE
AN ACT**

RELATING TO A CREDIT RATING ENHANCEMENT COMMITTEE; AMENDING CHAPTER 12, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1224, IDAHO CODE, TO CREATE THE IDAHO CREDIT RATING ENHANCEMENT COMMITTEE IN THE OFFICE OF THE STATE TREASURER, TO PROVIDE MEMBERSHIP, COMPENSATION, A QUORUM, MEETINGS AND PERSONNEL; AND AMENDING CHAPTER 12, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1225, IDAHO CODE, TO PROVIDE THE FUNCTIONS AND DUTIES OF THE CREDIT RATING ENHANCEMENT COMMITTEE.:

S 1067, S 1068, S 1069, S 1070, S 1071, S 1072, S 1073, S 1074, S 1075, and S 1076 were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

SJR 101, by State Affairs Committee, was read the second time at length and filed for third reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 12:40 p.m. until the hour of 11 a.m., Tuesday, February 1, 2005.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary